JUSTICE 2 COMMITTEE

AGENDA

8th Meeting, 2007 (Session 2)

Tuesday 20 March 2007

The Committee will meet at 2.00 pm in Committee Room 1.

1. **Subordinate legislation**: The Committee will consider the following negative instruments—

   - The Police Grant (Scotland) Order 2007 (SSI 2007/109)
   - The Police Act (Criminal Records) (Scotland) Amendment Regulations 2007 (SSI 2007/112)
   - The Supervised Attendance Order (Prescribed Courts) (Scotland) Order 2007 (SSI 2007/120)
   - The Divorce etc. (Pensions) (Scotland) Amendment Regulations 2007 (SSI 2007/122)
   - The Football Banning Orders (Regulated Football Matches) (Scotland) Order 2007 (SSI 2007/125)
   - The Testing of Arrested Persons for Class A Drugs (Prescribed Area) (Scotland) Order 2007 (SSI 2007/131)
   - The Police (Scotland) Amendment Regulations 2007 (SSI 2007/134)
   - The Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2007 (SSI 2007/190).

2. **Legacy paper**: The Committee will consider a legacy paper which will provide advice to its successor Committee, based on its experience of the second Parliamentary Session

   Tracey Hawe
   Clerk to the Committee
Papers for the meeting—

Agenda Item 1

Cover note (including SSI and Explanatory Notes) J2/S2/07/8/1
Cover note (including SSI and Explanatory Notes) J2/S2/07/8/2
Cover note (including SSI and Explanatory Notes) J2/S2/07/8/3
Cover note (including SSI and Explanatory Notes) J2/S2/07/8/4
Cover note (including SSI and Explanatory Notes) J2/S2/07/8/5
Cover note (including SSI and Explanatory Notes) J2/S2/07/8/6
Cover note (including SSI and Explanatory Notes) J2/S2/07/8/7
Cover note (including SSI and Explanatory Notes) J2/S2/07/8/8

Agenda Item 2

Legacy paper J2/S2/07/8/9

Correspondence from Justice 2 Committee to Minister for Justice and Chief Executive, SPS, on Prisoner Escort and Court Custody Services Contract J2/S2/07/8/10
Letter from Chief Executive, SPS, to Justice 2 Committee on Prisoner Escort and Court Custody Services Contract, dated 9 March 2007 J2/S2/07/8/11
Letter from Minister for Justice to Justice 2 Committee on child-sex offenders (to follow) J2/S2/07/8/12
Letter from Minister for Communities to Justice 2 Committee on child-sex offenders (to follow) J2/S2/07/8/13

Documents circulated for information only—

Letter from Minister for Justice to Convener, Justice 2 Committee on Annual Reports of the Intelligence Services Commissioner, dated 8 March 2007

Updated briefing from Sheila Bird on Prisoner Escort and Court Custody Services Contract, 12 March 2007

1. The Subordinate Legislation Committee considered this instrument at its meeting on 6 March 2007. No points arose.

2. If members have any queries or points of clarification on the instrument which they wish to raise with the Scottish Executive in advance of the meeting, please could these be passed to the Clerk of the Committee as soon as possible, to allow for sufficient time for a response to be received in advance of the Committee meeting.

Clerk to the Committee
15 March 2007
JUSTICE 2 COMMITTEE

8th Meeting 2007 (Session 2)

Tuesday 20 March 2007

SSI title and number: The Police Act (Criminal Records) (Scotland) Amendment Regulations 2007 (SSI 2007/112)

Type of Instrument: Negative

Meeting: 20 March 2007

Date circulated to members: 15 March 2007

Justice 2 Committee deadline to consider SSI: 26 March 2007

Motion for annulment lodged: No

SSI drawn to Parliament’s attention by Sub Leg Committee: No

1. The Subordinate Legislation Committee considered this instrument at its meeting on 6 March 2007. No points arose.

2. If members have any queries or points of clarification on the instrument which they wish to raise with the Scottish Executive in advance of the meeting, please could these be passed to the Clerk of the Committee as soon as possible, to allow for sufficient time for a response to be received in advance of the Committee meeting.

Clerk to the Committee
15 March 2007
JUSTICE 2 COMMITTEE

8th Meeting 2007 (Session 2)

Tuesday 20 March 2007

SSI title and number: The Supervised Attendance Order (Prescribed Courts) (Scotland) Order 2007 (SSI 2007/120)

Type of Instrument: Negative

Meeting: 20 March 2007

Date circulated to members: 15 March 2007

Justice 2 Committee deadline to consider SSI: 26 March 2007

Motion for annulment lodged No

SSI drawn to Parliament's attention by Sub Leg Committee: Yes

1. The Subordinate Legislation Committee has drawn the attention of the Justice 2 Committee and Parliament to the Order on the basis that an Executive Note was not initially provided by the Executive with the instrument. The Executive has now done so in light of the Subordinate Legislation Committee’s concerns.

2. If members have any queries or points of clarification on the instrument which they wish to raise with the Scottish Executive in advance of the meeting, please could these be passed to the Clerk of the Committee as soon as possible, to allow for sufficient time for a response to be received in advance of the Committee meeting.

Clerk to the Committee
15 March 2007
JUSTICE 2 COMMITTEE

8th Meeting 2007 (Session 2)

Tuesday 20 March 2007

SSI title and number: The Divorce etc. (Pensions) (Scotland) Amendment Regulations 2007 (SSI 2007/122)

Type of Instrument: Negative

Meeting: 20 March 2007

Date circulated to members: 15 March 2007

Justice 2 Committee deadline to consider SSI: 26 March 2007

Motion for annulment lodged No

SSI drawn to Parliament’s attention by Sub Leg Committee: No

1. The Subordinate Legislation Committee considered this instrument at its meeting on 6 March 2007. No points arose.

2. If members have any queries or points of clarification on the instrument which they wish to raise with the Scottish Executive in advance of the meeting, please could these be passed to the Clerk of the Committee as soon as possible, to allow for sufficient time for a response to be received in advance of the Committee meeting.

Clerk to the Committee
15 March 2007
JUSTICE 2 COMMITTEE

8th Meeting 2007 (Session 2)

Tuesday 20 March 2007

SSI title and number: The Football Banning Orders (Regulated Football Matches) (Scotland) Order 2007 (SSI 2007/125)

Type of Instrument: Negative

Meeting: 20 March 2007

Date circulated to members: 15 March 2007

Justice 2 Committee deadline to consider SSI: 26 March 2007

Motion for annulment lodged: No

SSI drawn to Parliament's attention by Sub Leg Committee: No

1. The Subordinate Legislation Committee considered this instrument at its meeting on 6 March 2007. No points arose.

2. If members have any queries or points of clarification on the instrument which they wish to raise with the Scottish Executive in advance of the meeting, please could these be passed to the Clerk of the Committee as soon as possible, to allow for sufficient time for a response to be received in advance of the Committee meeting.

Clerk to the Committee
15 March 2007
# JUSTICE 2 COMMITTEE

## 8th Meeting 2007 (Session 2)

**Tuesday 20 March 2007**

<table>
<thead>
<tr>
<th>SSI title and number:</th>
<th>The Testing of Arrested Persons for Class A Drugs (Prescribed Area) (Scotland) Order 2007 (SSI 2007/131)</th>
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Clerk to the Committee

15 March 2007
JUSTICE 2 COMMITTEE

8th Meeting 2007 (Session 2)

Tuesday 20 March 2007

SSI title and number: The Police (Scotland) Amendment Regulations 2007 (SSI 2007/134)

Type of Instrument: Negative

Meeting: 20 March 2007

Date circulated to members: 15 March 2007

Justice 2 Committee deadline to consider SSI: 26 March 2007

Motion for annulment lodged No

SSI drawn to Parliament’s attention by Sub Leg Committee: No

1. The Subordinate Legislation Committee considered this instrument at its meeting on 6 March 2007. No points arose.

2. If members have any queries or points of clarification on the instrument which they wish to raise with the Scottish Executive in advance of the meeting, please could these be passed to the Clerk of the Committee as soon as possible, to allow for sufficient time for a response to be received in advance of the Committee meeting.

Clerk to the Committee
15 March 2007
# JUSTICE 2 COMMITTEE

## 8th Meeting 2007 (Session 2)

**Tuesday 20 March 2007**

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</tbody>
</table>

### Motion for annulment lodged

- No

### SSI drawn to Parliament’s attention by Sub Leg Committee:

- No

1. The Subordinate Legislation Committee considered this instrument at its meeting on 13 March 2007. No points arose.

2. If members have any queries or points of clarification on the instrument which they wish to raise with the Scottish Executive in advance of the meeting, please could these be passed to the Clerk of the Committee as soon as possible, to allow for sufficient time for a response to be received in advance of the Committee meeting.

Clerk to the Committee
15 March 2007
Justice 2 Committee Legacy Paper (draft)

Background

1. This paper provides an overview for the successor Justice Committees of the work undertaken by the Justice 2 Committee during the second session of the Scottish Parliament and highlights any work to be taken forward.

2. The main work of the Committee has been scrutinising legislation. Certain policy areas covered by the Justice Committees have given rise to a heavy legislative programme in both the first and second sessions of the Parliament and the scrutiny of legislation has therefore tended to dominate the work of the Justice 2 Committee. During the course of 2005, the Committee did undertake a wide-ranging inquiry into youth justice and this is covered in more detail at paragraph 15.

Conveners Group Legacy Paper

3. In its legacy paper, the Conveners Group expressed serious concerns about the number of bills introduced and referred to committees in the second session. It noted that this could adversely affect the ability of some committees to undertake other work, particularly the scrutiny of the Executive through inquiries, with the result that large and important areas of Executive policy and administration might not receive the appropriate levels of scrutiny by Parliamentary committees.

4. The Group recommended that Standing Orders should provide that committees have an allocation of time to undertake work of their own choosing and that this should take priority over the need to consider Bills; that the Executive should try to avoid a build-up of Executive Bills being introduced in the final year of a parliamentary session and that the Bureau should work closely with conveners to agree reasonable timescales for consideration of Bills at stages 1 and 2.

Legislation

5. The following Bills were scrutinised by the Justice 2 Committee:

- Executive Bills
  - Vulnerable Witnesses (Scotland) Bill
  - Antisocial Behaviour (Scotland) Bill (secondary committee)
  - Fire (Scotland) Bill
  - Tenements (Scotland) Bill
  - Licensing (Scotland) Bill (secondary committee)
  - Management of Offenders (Scotland) Bill
  - Police Public Order and Criminal Justice (Scotland) Bill
  - Legal Profession and Legal Aid (Scotland) Bill
  - Custodial Sentences and Weapons (Scotland) Bill
Members Bills
Civil Appeals (Scotland) Bill
Christmas Day and New Year’s Day Trading (Scotland) Bill

Potential post-enactment scrutiny
6. Of the legislation considered, three of the Executive Bills are suggested as providing opportunities for an incoming committee to undertake post-legislative scrutiny during the parliament’s third session.

7. The Antisocial Behaviour etc (Scotland) Act 2004 was primarily scrutinised by the Communities Committee. However at stage 1, the Justice 2 Committee was a secondary committee and reported to the Communities Committee. Subsequent to the Bill’s passage, there was a change in Ministerial responsibilities and this policy area now falls within the Minister for Justice’s remit. The Executive is undertaking some post-legislative analysis and a number of reports are expected during the course of 2007. It may be that an incoming Committee would wish to review the outcome of this analysis.

8. The Management of Offenders etc (Scotland) Act 2005 created Community Justice Authorities (CJA) and established a Home Detention Curfew Scheme for low risk prisoners. Community Justice Authorities come into full operation this year and will be central to ensuring joined-up working amongst the various agencies involved in criminal justice. An incoming Committee may want to maintain a watching brief on how well the CJAs are bedding in, along with scrutinising the introduction of multi-agency protection arrangements (MAPPA) for the management of violent and sexual offenders.

9. The Legal Profession and Legal Aid (Scotland) Act 2007 received a great deal of interest, particularly from the legal profession, but also from members of the public. The Act creates a Scottish Legal Complaints Commission with responsibility for dealing with “service” complaints. The professions will still deal with matters of conduct. During scrutiny, there was concern that this system did not wholly remove complaints handling from the profession and that the ‘hybrid’ system could cause confusion. The Regulatory Impact Assessment which accompanied this Bill states that a full post-implementation review will take place within three years of the Commission becoming operational. This is something that an incoming Committee will wish to take an interest in.

Legislation expected in the next session of Parliament
10. Although it will be for the new administration to determine its legislative programme, the Committee is aware that the Executive has published proposals for a future Judiciary Bill with the intention of having a Bill ready for any incoming administration.

11. There is also likely to be further legislation in the area of legal aid and access to justice and additionally the Lord Justice Clerk is undertaking a review of the civil courts and their operation. During 2004, members of
both justice committees met with Lord Dervaird, to discuss his proposals for a draft Arbitration Bill. At that time, the Minister advised that the Executive had no plans to include legislation on arbitration in its programme but that longer term, this was an area of civil justice that the Minister would be keen to look at. Arbitration may be covered by the Lord Justice Clerk’s review.

Post-legislative Scrutiny Undertaken

Adults with Incapacity (Scotland) Act 2000
12. This Act was passed in 2000 and provides for decisions relating to property, financial affairs, medical treatment or personal welfare to be made on behalf of adults who lack the legal capacity to do so themselves.

13. In 2003, the Committee sought views from a number of organisations on the effectiveness of the Act, whether the intended policy outcomes had been realised and whether further legislative change was needed. An Executive-funded project was set up to monitor the implementation of the Act and to make recommendations for improvement. The Committee received written and oral updates from the Deputy Minister for Justice and legislative changes were identified and taken forward by way of statutory instrument and in the Smoking, Health and Social Care (Scotland) Act and the Adult Support and Protection (Scotland) Act.

14. In the view of the Committee, its involvement in the post-legislative scrutiny of this Act ensured continued focus by the Executive on the highlighted problems and brought about improvements in the effectiveness and operation of the Act. The Committee’s approach to the post-legislative scrutiny was not labour-intensive. Notwithstanding this, the Committee assisted in bringing about the much-needed changes. The Committee therefore commends this approach to its successors.

Committee-Initiated Inquiries

Youth Justice
15. During 2004 / 2005 the Committee undertook a wide-ranging inquiry into youth justice with a remit “to review the effectiveness of multi-agency working in the youth justice field and to identify and assess the impact of gaps in service provision in the youth justice field”.

16. The Committee took evidence from a large number of organisations and individuals and published its report in 2005. On multi-agency working, the Committee suggested that the Executive should consider placing a stronger legal duty on local authorities for the corporate responsibility of young offenders and that the local authority justice strategy groups needed clearer direction. The Committee’s report highlighted gaps in diversionary services, mental health services and addiction services and drew attention to the considerable concerns about lack of stability in funding of support services.
17. This was a complex inquiry and an incoming committee might wish to consider seeking an update on the Executive’s work in this area. It is understood that the Executive intends to legislate in the next session to reform the Children’s Hearings system, although this legislation is likely to be referred to the Education Committee.

Management of child-sex offenders

18. Of particular note was the work undertaken in relation to PE862 (in the name of Margaret Ann Cummings) which called for a review of the current system for dealing with and monitoring convicted child sex offenders. This petition raised a number of complex cross-cutting issues which the Committee felt could not be given proper consideration in the time available to it. In recognition of this, the Parliament’s first formal sub-committee was established with the sole remit of considering the issues raised by this petition.

19. The sub-committee was established in June 2006 with a remit to inquire and report to this Committee on—

- The extent of information which local communities should receive on child sex offenders within their locality;
- The way in which housing is allocated to sex offenders;
- Whether steps need to be taken to distinguish sexual offences against children from such offences against adults;
- Whether changes need to be made to the way in which sexual offences against children are considered and disposed of by the courts, and in particular, whether adequate sentencing options exist.

20. The sub-committee appointed an adviser and gathered evidence at meetings, internationally via video-conferencing and through visits. Its report was published on 15 December 2006 and made 33 recommendations. The Justice 2 Committee adopted the report, sought a formal written response from the Executive and took evidence from the Minister for Justice on 6 March 2007.

21. There are a number of issues arising from the report, and this evidence session, which an incoming committee will wish to follow up.

22. The sub-committee recommended that the police should have a power to enter and search premises without warrant where a child was believed to be danger. The Minister for Justice believes that existing common law and statutory powers are sufficient, but discussions on this matter are ongoing with ACPOS. In addition the new committee will wish to scrutinise the implementation of the new bail reforms, which provide that bail will only be granted in exceptional circumstances where a person has a previous conviction for a sexual or violent offence.

23. A number of issues in relation to housing are also worthy of further scrutiny. In particular, the sub-committee wished to see all registered sex-offenders released to a verifiable home address. Work in relation to
homeless offenders is ongoing and the new committee will wish to receive an update on this, and in particular, on whether local authorities and registered social landlords should require a registered sex offender to declare to that they are subject to the notification requirements. The new committee may wish to have sight of any guidance issued to these bodies.

24. A number of other policies are in the process of being rolled out and the new committee will wish to receive updates on:

- The roll-out of VISOR to criminal justice social work departments and the SPS;
- The use of the child exploitation and online protection centre (CEOP) website to publicise the details of non-compliant sex-offenders;
- The use of MAPPA annual reports to publicise the numbers of sex offenders whose whereabouts are unknown and the number of formal warnings issued to sex offenders; and
- The roll-out of treatment programmes both within prisons and in the community.

Prisoner Escort and Court Custody Contract

25. In 2003, the Scottish Prison Service (SPS) entered into a contact with Reliance Secure Task Management Ltd for the provision of prisoner escort and court custody services. The contract is estimated to be worth £126m over 7 years. Due to significant difficulties in the implementation of the early stages of the contract, the Committee has received regular updates on this matter, and has scrutinised the post-implementation review of this contract.

26. A number of FOI requests have also been lodged seeking publication of the full contract and all performance management data pertaining to the contract. Several of these requests have been the subject of judgements by the Scottish Information Commissioner, who has commented adversely on the use of a confidentiality clause which entitled SPS to withhold certain information in relation to this contract.

27. The Committee sought the Minister’s assurance that the comments of the Scottish Information Commissioner would be taken into account when negotiating (or re-negotiating) any contract where a private contractor is responsible for the delivery of public services and emphasised that the reporting requirements should be a matter of public record.

28. The SPS is currently in the process of negotiating a contract variation for this contract, due to the higher than anticipated numbers of prisoner movements under the contract. This contract variation will be published on the SPS web-site shortly. Given the concerns expressed about the availability of information relating to performance under this contract and the Committee’s comments about future contracts for public services, an incoming committee may wish to keep this matter under review.
Legislative Consent Memoranda (Sewel Motions)

29. During the first session of the Parliament, it was not usual practice for Committees to scrutinise such motions. However, changes to the parliament’s standing orders now provide for a formal role for committees to consider legislative consent memoranda and to report their views to the Parliament prior to the motion being considered.

30. During the second session, the Justice 2 Committee looked at 9 legislative consent memoranda. The Committee’s scrutiny of the Constitutional Reform Bill was especially noteworthy as, unusually, and in recognition of the importance of the issues under consideration, the Lord President gave oral evidence to the Committee.

31. The main issue for the Committee was the establishment of a UK supreme court and the concerns expressed by the Judiciary that the existence of a UK supreme court would, over time, dilute the separate identity of Scots law. Following representations made, not least by the Lord President, the Bill was amended to ensure that a decision in an appeal coming from England would not be determinative of Scots law and that the Supreme Court would respect the continued separate existence and identity of the two legal systems.

32. A number of the Committee’s reports on LCMs identified problems with timing, particularly the lack of notice given and the short period within which the Committee was expected to take evidence and make its report. Timetables have also been subject to changes during Committee consideration of memoranda. The Committee understands that the new procedures were bedding in and it is hoped that a greater exchange of information between the Executive and Westminster will prevent such problems arising in the third session.

Budget Scrutiny

33. Scrutiny of the Justice and related elements of the budget is usually undertaken jointly by the two Justice Committees, as both are likely to want to take evidence from the same witnesses during the same timeframe. The Committees are of the view that this is the most efficient use of time, both for members and witnesses.

34. For its most recent scrutiny, the Committees did not seek the appointment of an adviser, although it should be noted that last year’s budget scrutiny was a shorter process because of the postponement of the UK spending review until this year. It may be that for the next financial year, consideration should be given to appointing a suitably qualified adviser.

35. The joint report of the Committees on the 2007/08 draft spending plans did not make any recommendations for changes to programme expenditure. However, in the context of scrutiny of the prisons budget, the Committees
urged the Minister to ensure that the tendering process for the new prison be completed in as short a time as possible; recommended that research be undertaken into the underlying reasons for the surge in short-term prisoner numbers; that a priority for the incoming administration in May should be to address the prison situation in the Northeast and that the Justice Committees should be regularly updated on progress made towards settling cases arising from “slopping out”. In the context of the police budget, the Committees formed the view that central management of police pensions would be beneficial and asked the Minister to advise when a decision is taken on this.

36. These are all matters which an incoming Committee will wish to follow up in forthcoming budget scrutiny.

Scrubtiny of Justice and Home Affairs in Europe

37. The Committee has maintained a watching brief throughout the second session on relevant developments in Europe and has had a number of evidence sessions with the Minister and officials, some of which were held jointly with the Justice 1 Committee.

38. Early on, the Committee identified three dossiers as being of particular interest, namely the draft framework decision on Procedural Rights in Criminal Proceedings, the Proposal for a Council Framework Decision on the European Supervision Order in Pre-Trial Procedures Between Member States in the European Union and the Green Paper on Sentencing (approximation, mutual recognition and enforcement of criminal sanctions in the European Union). The role of the Committee has been mainly to seek regular updates from the Minister and officials on the progress of these dossiers. In addition to these 3 dossiers, the Committee has also suggested that the recently proposed Framework Decision on Witness Protection also be tracked.

39. More recently, the Justice and Home Affairs Council of EU Ministers has agreed to a proposal from the German Presidency to incorporate the Prum Convention into European law. The Prum Convention is an existing treaty between Germany, the Netherlands, Spain, France, Luxemburg, Austria and Belgium, with Finland, Italy, Portugal, Slovenia, Sweden, Romania, Slovakia and Bulgaria waiting to join – note that the UK was not a signatory and had not indicated a wish to join. This proposal could have potential benefits and possible implications for Scotland, not least for Scottish police forces, the SCDEA and SCRO and will have implications for the UK as a whole. The House of Lords EU Select Committee has just launched an inquiry into the matter.

40. As this issue emerged late in the parliamentary session, neither of the Justice Committees had a chance to discuss this with the Minister for Justice. The Committees therefore wrote to the Minister in March requesting a written briefing on the proposal. This is something that a successor committee will wish to follow up.
41. In April 2006, the Committee undertook a very successful visit to Brussels attending meetings and briefings with a number of key Commission and Scotland Office officials. The visit was co-ordinated by the Parliament’s Europe Officer and was of benefit to members in clarifying the roles of the main players and the various processes in the development of policy initiatives.

42. Depending on the membership of the new Committees, it may be that a familiarisation visit to Brussels would be useful.

Other Matters

Scottish Prison Complaints Commissioner
43. Following correspondence received from Vaughan Barratt, the Scottish Prisons Complaints Commissioner, the Committee took evidence on the work of his office. During that session, Mr Barratt stated that in his view the office of SPPC would benefit from being placed on a statutory footing.

44. The Committee raised this issue with the Minister who advised that this was under consideration and would be considered as part of a wider review of scrutiny levels in the public sector. This review, which is being carried out by Professor Lorne Crerar, is due to report in 2007, and an incoming Committee may wish to scrutinise both this issue and the wider results of the review.

Visits etc
45. Over the course of session 2, the Committee undertook a number of visits, e.g. to Reliance Monitoring Centre, the Centre for Forensic Science, the Scottish Criminal Records Office and the Violence Reduction Unit in Glasgow. Members visited a number of prisons, various courts and the Crown Office and also undertook a number of visits that were directly relevant to Committee inquiries, such as visits to youth justice projects and attendance at two football matches (the latter in connection with the proposal to introduce football banning orders). The Committee found such visits to be very useful and would recommend that any successor committee continue to undertake similar activities.

Petitions and Subordinate Legislation
46. The Committee considered 12 petitions, and these are listed in the annexe to this paper. The Committee notes that petitions can often raise substantial issues, such as those raised in relation to the management of child-sex offenders. It is important that Committees are able to find sufficient time to examine these issues, and the Committee has at times struggled to do so whilst scrutinising Executive-led work such as Bills and Legislative Consent memoranda.

47. The Committee has also considered 34 affirmative instruments and 102 negative instruments.
Conclusion

48. The Committee has, of necessity, met weekly for most the session. The volume and timing of Executive legislation has meant that it has not been possible for the Committee to undertake much in the way of other work. Some significant pieces of legislation have been considered by the Committee and it is hoped that an incoming committee will take this work forward by way of post-enactment scrutiny.

Annex A: Petitions (in chronological order)

PE578 – Mr Donald MacKinnon calling for rights available to those complaining about public bodies to be extended to young and vulnerable people reporting abuse.

PE200 – Mr Andrew Watt calling for a review of the working methods of the Legal Aid Board particularly in relation to the collection and disbursement of compensation monies collected.

PE375 – Mrs Elaine Crawford calling for review of criminal injuries compensation procedure and policy, and review of sentencing policy on violent crime.

PE347 – Mr Kenneth Mitchell calling for investigation of shoeing Clydesdale Horses and introduction of legislation to make such shoeing illegal unless sanctioned for medical reasons.

PE565 - Ms J Shields calling for mechanisms to ensure that welfare concerns of minors are paramount in Scottish law.

PE659 - Mr Graham Sturton calling for a review of sentencing policy on violent crime in Scotland.

PE682 – Mr Bill Alexander calling for the Scottish Executive to establish a transparent correspondence handling procedure that can be accessed by the public.

PE763 – Ms Julia Clarke, on behalf of the Consumers’ Association, calling for implementation of the findings of Justice 1 Committee’s inquiry into the regulation of the legal profession.

PE890 - James A Mackie calling for the creation, within the Police etc (Scotland) Bill, of an independent police complaints commission.

PE862 – Margaret Ann Cummings calling for a review of current system for dealing with and monitoring convicted child sex offenders.

PE863 - Mr Bill Alexander calling for an amendment of the Solicitors (Scotland) Act 1980 to allow limited companies to be given the right to apply for legal aid or the right to represent themselves in court.
PE893 - Paul Macdonald, on behalf of Save our Swords Campaign, calling for Scottish Parliament to oppose introduction of a ban on sale or possession of swords used for legitimate historical, cultural, artistic, sporting, economic and religious purposes.
Dear Cathy

PRISONER ESCORT AND COURT CUSTODY CONTRACT

The Committee considered this contract, and its associated post-implementation review at its meeting on 6 February 2007. The Committee agreed that I should write to you and to the Scottish Prison Service in order to pass on the Committee’s comments.

I enclose a copy of the letter sent to the Scottish Prison Service, which requests a number of pieces of information.

In particular, I would draw your attention to the negotiations currently underway between the SPS and Reliance, to reflect the higher than anticipated number of prisoner movements. In this regard, the Committee noted the comments of the Scottish Information Commissioner in relation to the confidentiality clauses in the contract, in his decisions 02/04 (Ms Nicola Sturgeon) and 053/2006 (Professor Sheila Bird). The Committee is of the view that when a private contractor carries out a contract for the delivery of public services the reporting requirements should be a matter of public record. Members believe that confidentiality should be the exception and not the norm.

The Committee trusts that these matters will be borne in mind during the contract variation negotiations.
I would be most grateful to receive a response to this letter by 9 March 2007.

Yours sincerely

David Davidson MSP
Convener, Justice 2 Committee
Dear Mr Cameron

PRISONER ESCORT AND COURT CUSTODY CONTRACT

Thank you for providing the Committee with a copy of the post-implementation review of this contract.

The Committee considered this review at its meeting on 6 February 2007 and agreed that I should write to you in order to pass on the Committee's comments.

The Committee noted that SPS is currently engaged in negotiations for a contract variation to reflect the higher than anticipated prisoner movement volumes under the contract. I would be grateful if you could provide the Committee with further information on how the prisoner movement volumes were calculated for the original contract, together with details of any end of year balancing payments paid to Reliance.

The Committee further noted the comments of the Scottish Information Commissioner in relation to the confidentiality clauses in the contract, in his decisions 02/04 (Ms Nicola Sturgeon) and 053/2006 (Professor Sheila Bird). The Committee is of the view that when a private contractor carries out a contract for the delivery of public services the reporting requirements should be a matter of public record. Members believe that confidentiality should be the exception and not the norm.

The Committee wishes to receive an update on the contract variation negotiations and trusts that the Scottish Prison Service will bear in mind the Committee's views on disclosure in the course of these negotiations.
I would be most grateful to receive a response to this letter by 9 March 2007.

Yours sincerely

David Davidson MSP
Convener, Justice 2 Committee
PRISONER ESCORT AND COURT CUSTODY CONTRACT

I refer to your letters of 13 February to the Minister for Justice and to me seeking clarification in relation to points raised at the Justice 2 Committee in regarding the prisoner escort contract with Reliance Custodial Services, to which I am replying as Chief Executive of the Agency with responsibility for the issues you raise.

No additional balancing payments have been made. We are currently in negotiations with the company, the settlement of which will be reflected in the SPS annual audited accounts.

There has been an increase of more than 10% since the contract bandings were agreed. We have recently concluded agreement with the company to increase the range of bandings. This takes account of the increasing numbers going through the courts and the increasing prisoner population trend. This contract amendment will be published shortly on the SPS website at www.sps.gov.uk.

I am copying this letter to the Minister for Justice.

TONY CAMERON
Chief Executive
Dear David

JUSTICE 2 COMMITTEE REPORT ON CHILD SEX OFFENDERS

I was pleased to be able to respond in person to the Committee’s further questions on the recommendations from its Review of Child Sex Offenders and again wish to thank the Committee for the opportunity to engage with them on what are difficult and important issues.

When I gave evidence to the Committee on 6 March, I undertook to provide further clarification in relation to the legal and ECHR issues around the police powers of entry. I understand that the Committee has written separately to the Minister for Communities about accommodation issues.

I share the Committee’s view that there should be absolute clarity for police officers in relation to police powers of entry. As a first step, I explained that we were working with ACPOS to ensure that the Standard Operating Procedures Manual relative to the management of sex offenders makes explicit the existing powers of entry available to the police to deal with the situations envisaged by the Committee. I said on 6 March that Justice Department officials were due to meet ACPOS and that meeting took place the following day. Detective Superintendent Cameron, who had previously given evidence to the Committee, recognised the concerns expressed in your report and undertook to ensure that by end April the ACPOS Standard Operating Procedures provide clear and detailed operational guidance on this crucial aspect of police powers. Every police officer in Scotland will have access to the Manual. I hope that the Committee finds this response acceptable.
In taking this further action, I want to reassure the Committee that this is a matter which was rigorously considered when preparing the Executive’s response to the recommendations in Professor Irving’s review on police powers of entry and search for registered sex offenders. The conclusion was that the introduction of a new statutory law was unnecessary as it would replicate powers which the police can already exercise under the common law.

I accept that in such matters, there are fine judgements to be made between promoting a clear understanding about the use of existing powers and introducing new powers. In accepting Professor Irving’s recommendation, we drew a clear distinction between the immediate need for the police to act in extremis and the steps we have introduced for powers of entry for the purposes of risk assessment under the requirements of the notification scheme. The Parliament agreed during the passage of the Police, Public Order and Criminal Justice (Scotland) Act 2006 that the police should be required to apply to a sheriff for a warrant to enter such premises for the purposes of risk assessment.

In framing the terms of the legislation, the Executive took great care not to hinder the existing common law police powers of entry. As it stands, the common law powers of entry can be used in any situation where it is considered that the commission of an offence is suspected or the safety of the community is at risk. I know that certain individuals in the police have pressed for a blanket provision but I consider that existing powers are adequate for the specific purposes which concern the Committee. I want to avoid making provisions in legislation which might be interpreted as a narrowing of the police general powers of entry which are explained in the Annex to this letter.

It has also been part of our considerations that the provision of a blanket provision is unlikely to meet international and domestic obligations under the European Convention on Human Rights (ECHR). I do not see this as an impediment to what we want to achieve. There is a balance to be struck between the exercise of police powers and the rights of the individual. Whilst I do not think it wrong that individual police officers, like all professionals, should be held accountable for the exercise of their powers, neither do I believe that any reasonable person would question the right of the police to act in this way where there were grounds for believing that the safety of a child was at risk.

The Committee asked specifically about the ECHR implications for the introduction of a power to enter and search premises of registered sex offender without a warrant, especially in relation to ECHR. Again a note is set out in annex to the letter.

Finally, we brought to the attention of the Crown Office the Committee’s enquiry on the Lord Advocates guidelines on the publication of police material in the media. Crown Office have asked us to convey that once any necessary agreement/protocol is in place, the issue of publication will be considered - although they must be alive to the possibility of releasing information which might prejudice substantially the prevention or the detection of a crime.

CATHY JAMIESON
EXISTING POLICE POWERS

1. At common law, if the police have reasonable cause to suspect that a child is within the home address of any person and an offence is being committed or has been committed that involves the child, the police would enter, if necessary by force, if refused admission. The police are empowered at common law to enter any premises without a warrant.

2. The police may enter by force if refused admission after revealing their identity and purpose. Therefore, if a police officer visited a registered sex offender at their home, and was refused entry, he could access the premises if he reasonably believed that an offence had been, or was being committed. The police may also enter and search a private residence, without consent, in cases of urgency (e.g. in order to preserve evidence).

3. Notwithstanding the above, the police also have a general statutory duty under section 17 of the Police (Scotland) Act 1967, to guard, watch and patrol to prevent the commission of offences, preserve order and protect life and property. This is a general duty to prevent the commission of offences.

4. The Committee also asked about the existing powers available to the police to deal with situations involving the safety of children where access to a sex offender’s house might be justified.

5. When there is a report of a missing child, there would follow an intelligence led police investigation. If considered appropriate in some circumstances, the homes of registered sex offenders, within the immediate vicinity, area, or neighbourhood could be visited and again where appropriate the officers could ask to search the house, to eliminate them from enquiries.

6. If the police receive information that either an abscondee (who is a child) or a child who has been reported to police as a missing person is being harboured within an address, the police, if refused entry, under Section 83 Children (Scotland) Act 1995, may apply for a warrant to search the premises for the child. If the police have reasonable cause to suspect that an offence is being committed or has been committed that involves the child, the police would revert to the common law powers detailed above.

ECHR IMPLICATIONS

7. The Committee asked specifically about the ECHR implications for the introduction of a power to enter and search premises of registered sex offender without a warrant, especially in relation to ECHR. The responsibility on all 8 Scottish police forces as a result of our international obligations is significant. Indeed there is an onus on the police (as a public authority) to ensure that they exercise their powers in a manner which is compliant with the ECHR, i.e. section 6(1) of the Human Rights Act 1998.

8. ECHR is not an impediment to bringing forwarding legislation in relation to police powers. However, any proposed legislation must be and is considered against the ECHR. This is because in accordance with the Scotland Act 1998, the Scottish Parliament cannot enact legislation which is not incompatible with the ECHR. The Scottish Ministers are also under a requirement not to do anything which is incompatible with the Convention. Therefore, it is crucial that the Scottish Executive takes account of any ECHR issues that may arise when Scottish Ministers seek to introduce legislation. The example of the power to enter and search the homes of sex offenders raises issues under Article
8 (the right to a private life). It is important that an assessment of these issues is considered against whether they could be justified under Article 8(2) for preventing and detecting crime or protecting the morals, rights and freedoms of others. It is also necessary to consider whether the proposed measures are proportionate to the aim which they seek to achieve.

9. While Article 8 protects the right to respect for private and family life, it also places a positive obligation on the police to protect persons from harm inflicted by others. Effectively, there is again a balance to be struck between the general interests of the community and the interests of the individual. It is this balance which is inherent in the whole of the Convention and it is this balance that the Executive must keep in mind when it considers what further measures it should introduce to safeguard the public.
Thank you for your letter of 7 March following the Justice Minister’s appearance before the Justice 2 Committee earlier this month. You requested further information on two matters that fall within my remit as Minister for Communities and I am pleased to provide this information as follows.

**Recommendation 20**

You asked for an update on how Recommendation 20 of the Justice 2 Sub-Committee’s report is being progressed and to what timescale. Recommendation 20 is that it should be a legal requirement for all application forms for local authority and other social rented housing to require information on whether the applicant is subject to the notification requirements of the Sexual Offences Act 2003.

You have noted the Executive’s support for the introduction of a legal requirement as proposed and the view of the Working Group that developed the National Accommodation Strategy for Sex Offenders (NASSO) that the question about whether an applicant is subject to the notification requirements of the Sexual Offences legislation is one that should be asked on housing application forms. In the Minister for Justice’s written response to the Committee of 20 February 2007, we indicated that the proposal would require to be considered further in terms of its compatibility with ECHR and Data Protection legislation, before any legislative proposal could be brought forward. We are currently engaged with Executive solicitors in seeking to find the best way of proceeding in a context where our clear policy preference is for the question to be asked and for this to be the consistent approach across all social landlords in Scotland. We are aiming to be in a position to issue further advice in April 2007 confirming the way forward on this issue, as a supplement to the National Accommodation Strategy for Sex Offenders.
The matter of Common Housing Registers (CHRs) also arose during the evidence-taking session and you have asked for details of the CHRs currently in operation, details of those planned and the timescales for their introduction.

The Executive has promoted, with funding of £3m and expert support, the development of CHRs between local authorities and their partner RSL providers in order to simplify access to social sector housing. A prominent view amongst local CHR partnerships is that the question about whether an applicant is subject to the notification requirements of the Sexual Offences legislation is one that should be asked on common housing application forms.

CHR development involves intensive work by local authorities and partner landlords in forging the necessary partnerships and specifying and building the IT systems required to deliver CHR services. The range of different priorities, partnership and technical issues arising in different areas mean that CHRs are being established in local areas at different rates and, in many cases, against timetables which have tended to be subject to slippage. Our best information at present is that there are operational CHRs in eight local authority areas (Aberdeen, Argyll & Bute, Edinburgh, Eilean Siar, Orkney, Perth & Kinross, Renfrewshire and Stirling). Around twenty other local authority areas are actively developing a CHR, with several of those currently scheduled to go live in the next six months. There are also local CHRs operating (i.e. at sub local authority area level) in a number of areas, including a new accessible housing register in Glasgow, and a national CHR between Bield, Trust and Hanover (Scotland) Housing Associations focusing on housing for older people was launched earlier this month. In a small minority of local authorities, progress has stalled at least temporarily given other priorities.

Earlier this year we provided a grant to allow the Scottish Housing Best Value Network (SHBVN) - a local government network which shares and promotes good practice development - to provide practical support, advice and assistance to CHR landlords. This new SHBVN service is intended to help ensure that momentum in the CHR programme is maintained by local authorities. Part of the service will involve SHBVN undertaking shortly a new survey into the status of CHRs in every area. This will provide up to date information on the number of CHRs in operation at that point, and the development and expected implementation date of other CHRs that are in development. We expect this new information to be available by May.

I hope this information is helpful to the Committee.

Rhona Brankin
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